

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.85.212 pertaining to the resource	)	ON PROPOSED AMENDMENT
based relative value scale (RBRVS)	)	
	)	

TO: All Interested Persons

1. On May 5, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on April 21, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)  
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains the same.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to convert the relative value units to a fee for a service. Effective July 1, 2008 there will be four conversion factors. They are:

(i) physician services, which applies to the following health care professionals listed in (2): physicians, mid-levels, podiatrists, public health clinics, independent diagnostic testing facilities, nutrition providers, QMB and EPSDT chiropractors, and dentists rendering medical procedures;

(ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services;

(iii) mental health services, which applies to the following health care professionals listed in (2): psychologists, licensed clinical social workers, and licensed professional counselors; or

(iv) anesthesia services, which applies to anesthesia services.

(c) through (e) remain the same.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the Medicare resource based relative value scale contained in the physicians' Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~71 Federal Register 69736 (December 1, 2006), effective January 1, 2007~~ 72 Federal Register 227 (November 27, 2007), effective January 1, 2008 which is adopted and incorporated by reference. A copy of the Medicare Physician Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(g) and (h) remain the same.

(2) Services provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):

(a) through (q) remain the same.

(r) independent diagnostic testing facilities (IDTF); ~~and~~

(s) school based services; and

(t) QMB and EPSDT chiropractic services.

(3) Except as set forth in ~~(7) (8) through (11)(a)(vi) (12)(a)(vi)~~, the fee for a covered service provided by any of the provider types specified in (2)(a) through ~~(2)(s) (2)(t)~~ is determined by multiplying the RVUs determined in accordance with ~~(6) (7) through (6)(a)(ii)(C) (7)(a)(ii)(C)~~ by the conversion factor, which is required to achieve the overall budget appropriation for provider services made by the Montana Legislature in the most recent legislative session and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (4), if any.

(4) For state fiscal year ~~2008~~ 2009, policy adjustors will be used to accomplish the targeted funding allocations, ~~which apply to family planning services, maternity services, and well child preventative visits as directed by the legislature.~~ The department's list of services affected by policy adjustors through ~~January 1, 2007~~ July 1, 2008 is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) The 60th Legislature appropriated additional funds for state fiscal year 2009. For all provider services identified in (2)(a) through (2)(t) there will be 1.67% additional funds. There was also an additional appropriation of \$2,043,234 for physician services only; it will be included in the physician conversion factor.

(5) through (6)(a)(ii)(C) remain the same but are renumbered (6) through (7)(a)(ii)(C).

~~(7) (8)~~ Except for physician administered drugs as provided in ARM ~~37.86.105(3)~~ 37.86.105(4), clinical, laboratory services and anesthesia services, if neither Medicare nor Medicaid sets RVUs, then reimbursement is by report.

(a) remains the same.

(b) For state fiscal year ~~2008~~ 2009, the by report rate is ~~46%~~ 45% of the provider's usual and customary charges.

~~(8) (9)~~ For clinical laboratory services for which there is an established fee:

(a) through (a)(iii) remain the same.

(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following for procedure codes without fees:

(i) remains the same.

(ii) the rate established using the by report methodology; or

(A) for purposes of ~~(8)(b)~~ (9)(b) through ~~(8)(b)(iii)~~ (9)(b)(iii), the by report methodology means averaging 50 paid claims for the same code that have been submitted within a 12 month span and then multiplying the average by the amount specified in ~~(7)(b)~~ (8)(b).

(iii) remains the same.

(9) through (9)(c)(ii) remain the same but are renumbered (10) through (10)(c)(ii).

~~(40)~~ (11) For equipment and supplies:

(a) through (a)(ii) remain the same.

(b) the department pays the lower of the following for DME items without fees:

(i) remains the same.

(ii) the by report rate provided in ~~(7)(b)~~ (8)(b).

(c) except for the bundled items as provided in ~~(12)~~ (13), the department pays the lower of the following for supply items with fees:

(i) and (ii) remain the same.

(d) except for bundled items as provided in ~~(12)~~ (13), the department pays the lower of the following for supply items without fees:

(i) remains the same.

(ii) the by report rate provided in ~~(7)(a)~~ (8)(a).

~~(44)~~ (12) Subject to the provisions of ~~(41)(a)~~ (12)(a), when billed with a modifier, payment for procedures established under the provisions of ~~(6)~~ (7) is a percentage of the rate established for the procedures.

(a) through (a)(vi) remain the same.

(12) through and (13) remain the same but are renumbered (13) and (14).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Medicaid program provides medical assistance to qualified low income and disabled residents of Montana. The state of Montana and the federal government jointly fund the program. The Montana Medicaid program pays enrolled providers for services to eligible individuals.

The purpose of this rule amendment is to update the Resource Based Relative Value Scale (RBRVS) fees paid to enrolled providers in accordance with the most recently published relative value units (RVUs) released by the Centers for Medicare and Medicaid Services (CMS). This rule amendment is necessary to incorporate the updated relative value units (RVUs) published in the Federal Register in December 2007. The updated RVUs are effective for the Medicare program on January 1, 2008. The change in the Montana Medicaid fees is effective July 1, 2008.

The 2007 Legislative Session, in House Bill 2, appropriated an additional 1.67%

(\$2,759,316) provider rate increase. Also, there was a physician specific appropriation of \$2,043,234 for physicians. ARM 37.85.212 specifies the reimbursement methodology for multiple professional providers (therapists, mid-level practitioners, and podiatrists to name a few).

Since August 1997, the Department of Public Health and Human Services (DPHHS) has used RBRVS-based fee schedules as the basis for paying almost all services provided by physicians, mid-level practitioners, therapists, and other individual practitioners. RBRVS was developed by the Medicare program and first implemented in 1992. It is now widely used by the Medicare plans, Workers' Compensation plan, and private sector insurers. For DPHHS and these other payors, the only services not typically paid via RBRVS are anesthesia services, clinical lab services, drugs provided in the office, durable medical equipment and supplies provided in the office, and a few miscellaneous items such as blood products.

Each procedure is identified by a number system, referred to as CPT code and Healthcare Common Procedure Coding System (HCPCS). The CPT and HCPCS code is assigned a relative value unit (RVU). The RVUs represent work, practice expense, and professional liability insurance. Annual updates to RVUs are based on recommendations of a committee of the American Medical Association (AMA) and the Specialty RVS Update Committee (RUC). Montana Medicaid incorporates these updates at the beginning of each state fiscal year. For each CPT and HCPCS code the RVUs are set at a national level and are adjusted to the Montana setting using Medicare's Geographic Practice Cost Index (GPCI) for Montana.

Payments are calculated by multiplying the combined costs (the RVU) by a conversion factor (CF), a monetary amount that is determined by each payor. Medicaid is a payor. Additionally, policy adjustors are applied for those services that receive either fewer or additional targeted funds such as obstetric care, well child screens, and family planning. Policy adjustors can be used to increase or decrease a level of payment.

The RBRVS calculation formula is  $RVU * CF * \text{policy adjustor} = \text{reimbursement rate}$ . The department is also amending the rule to create three medical conversion factors in place of one. The health care professionals reimbursed under the RBRVS system will be grouped as follows:

1. The physician services CF will apply to physicians, mid-levels, podiatrists, public health clinics, independent diagnostic testing facilities, nutrition providers, QMB and EPSDT chiropractors, psychiatrists, and dentists rendering medical procedures.
2. The allied services CF will apply to physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services.
3. The mental health services CF will apply to psychologists, licensed clinical social workers, and licensed professional counselors.

4. The anesthesia CF will apply to anesthesia services.

This rule amendment is also required to incorporate the updated relative value units (RVUs) published in the Federal Register. The updated RVUs are effective for the Medicare program January 1, 2008. RVUs are incorporated by reference. The reference changes annually.

The by-report rate specified in (8)(b) is updated to represent the most recent paid to charge ratio. This percentage is a result of dividing the previous years' reimbursement by the total amount billed.

The proposed amendment to ARM 37.85.212 impacts approximately 102,000 clients and about 6,000 RBRVS providers annually.

5. The department intends to apply these rules effective July 1, 2008. In the event the rules are amended retroactively no negative impact is anticipated.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 8, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State March 31, 2008.